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and the Estate of Valente Joaquin Ramirez

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

ARTISAN AND TRUCKERS CASUALTY
COMPANY, a Wisconsin corporation,

Plaintiff,

v.

CARLOS YARD SERVICE, INC.; CARLOS
YARD SERVICE, INC., dba CARLOS
TRUCKING; CARLOS CEH; SERGIO
IXMATLAHUA-COCOTLE; FRANCISCO
HERNANDEZ-VEGA; CELSO
RODRIGUEZ; GOMEZ
BONIFACIO; ANGELES CEH; PABLO
JAMINEZ CARRASCO; HONORIO
TELLEZ-CHONCOHUA; FLAVIO
ALMONTE-CORNEJO; ADAN TELLEZ-
CHONCOHUA; SANTIAGO AMBROCO-
JERONIMO; and THE ESTATE OF
VALENTE JOAQUIN RAMIREZ,

No. 3:12-cv-01299-JE

**DEFENDANTS PABLO JIMENEZ
CARRASCO AND THE ESTATE OF
VALENTE JOAQUIN RAMIREZ'S
MOTION TO DISMISS OR STAY**

Request for Oral Argument

Defendants,

ILLINOIS NATIONAL INSURANCE
COMPANY,

and

Intervenor/Plaintiff,

v.

CARLOS YARD SERVICE, INC.; CARLOS
YARD SERVICE, INC., dba CARLOS
TRUCKING; CARLOS CEH; SERGIO
IXMATLAHUA-COCOTLE; FRANCISCO
HERNANDEZ-VEGA; CELSO
RODRIGUEZ; GOMEZ BONIFACIO;
ANGELES CEH; PABLO JIMENEZ
CARRASCO; HONORIO TELLEZ-
CHONCOHUA; FLAVIO ALMONTE-
CORNEJO; ADAN TELLEZ-
CHONCOHUA; SANTIAGO; and the Estate
of VALENTE JOAQUIN RAMIREZ,
through its Personal Representative, MARTA
ISABEL GUEMBES HERRERA,

Defendants,

TO: CLERK OF THE COURT

AND TO: ALL PARTIES OF INTEREST

LR 7-1 CERTIFICATION

Counsel for all parties have conferred and do not oppose this motion except Plaintiff Illinois National Insurance Company ("Plaintiff Illinois"). The position of Carlos Yard Service Inc. d/b/a Carlos Trucking, Carlos Ceh and Sergio Ixmattlahua, who are unrepresented in this action and have not appeared, is unknown.

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CARRASCO AND THE ESTATE OF VALENTE
JOAQUIN RAMIREZ'S MOTION TO DISMISS OR
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MOTION TO DISMISS OR STAY

The parties made a good faith effort through personal or telephone conferences to resolve the dispute and have been unable to do so.

Pursuant to Federal Rule of Civil Procedure 12(b)(1), 12(b)(6) and this Court's inherent authority to abstain from deciding issues raised in a parallel state court proceeding, Defendants Pablo Jimenez Carrasco, and the Estate of Valente Joaquin Ramirez ("Defendants") hereby respectfully move to dismiss or stay the claims raised in this action in favor of actions raising the same coverage issues that Defendants filed in Oregon state court. As is set forth more fully in the Memorandum of Law that Defendants are filing herewith, this Court has discretion to abstain from hearing the state-law insurance coverage issues raised in this case pursuant to *Wilton v. Seven Falls Co.*, 515 U.S. 277, 115 S.Ct. 2137 (1995). This Court should exercise its discretion here to prevent Plaintiff Illinois from thwarting Defendants' good-faith forum choice.

On August 29, 2012, Defendant Pablo Jimenez Carrasco filed a complaint in the Circuit Court for the State of Oregon, County of Multnomah against Plaintiff Illinois, and on October 5, 2012, Defendant the Estate of Valente Joaquin Ramirez also filed an identical complaint seeking a declaration that Plaintiff Illinois is liable to Defendants under an insurance policy issued by Plaintiff Illinois to Defendant Carlos Yard Service. Exhibits A and B to Aguilar Decl. By filing the present action, Plaintiff Illinois asks this Court to disregard Defendants' good-faith choice of forum and decide issues that are already in dispute in the state court proceedings.

This Court should not acquiesce to Plaintiff Illinois' forum shopping by hearing this case. Rather, this Court should exercise its discretion to dismiss or stay this action so that Defendants can proceed with the claims they filed in good faith in state court.

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2013, I electronically filed the foregoing **DEFENDANTS PABLO JIMENEZ CARRASCO AND THE ESTATE OF VALENTE JOAQUIN RAMIREZ'S MOTION TO DISMISS OR STAY** with the Clerk of the Court using the CM/ECF system, which should send notification of such filing to the following:

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The parties listed below are being provided courtesy copies of the forgoing via U.S. Mail:

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